



Facts to Support Ground C

Section 174(2)(c) says "that those matters (if they occurred) do not constitute a breach of planning control".

The enforcement notice seeks removal of timber fencing around the edge of the first-floor rear terrace.

On the 6th September 2023 Camden Council approved an application for "*Removal of existing timber privacy fence to first floor rear terrace and erection of replacement metal balustrades, in association with use of the flat roof as a terrace*" (LPA Ref: 2023/2874/P).

In determining the application, it was accepted that the use of the terrace was lawful having been in established over four years ago. It has in fact been used for this purpose for over ten years and was set out like this when the property was purchased by the current owner in 2021 (See photographs from the property listing at **Appendix 1**). The owner was obliged to carry out works to the terrace as there were leaks through to the flat below (See details in email chain at **Appendix 2**). In order to carry out these works it was necessary to remove the timber fencing around the edge (See Photographs at **Appendix 3**). The roof was made good and a new timber slatted fence was put back in place (See Photographs at **Appendix 4**).

A year later a planning enforcement query was made regarding the replacement fencing. Officers determined the as-built timber balustrades to be "materially different" to what was previously there.

The appellant disputes this interpretation. Whilst it is beyond doubt that the fencing is different (i.e. the same fencing has not been put back) it still constitutes a timber structure around the terrace that performed a screening function and allowed for creeping plants to complement the screening. Whilst without planting there is a greater level of screening offered by the replacement fence due to the smaller apertures, there is no-one materially affected by this. In fact, the materiality of the change would be greater if it had occurred the other way around.

The materiality of a change such as this is a matter of planning judgement and the Inspectorate is respectfully asked to take a view on this.